



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0371; FRL-9735-4]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, New Jersey, and Pennsylvania; Determination of Attainment of the 2006 24- hour Fine Particulate Standard for the Philadelphia-Wilmington, PA-NJ-DE Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination of attainment regarding the Philadelphia-Wilmington, PA-NJ- DE fine particulate (PM_{2.5}) nonattainment area (hereafter referred to as “the Philadelphia Area” or “the Area”). EPA is proposing to determine that the Philadelphia Area has attained the 2006 24-hour PM_{2.5} National Ambient Air Quality Standard (NAAQS), based upon complete, quality-assured and certified ambient air monitoring data for the 2008-2010 and 2009-2011 periods and upon preliminary data available to date for 2012. If EPA finalizes this proposed determination of attainment, the requirements for the Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to the attainment of the standard shall be suspended for so long as the Area continues to attain the 2006 24-hour PM_{2.5} NAAQS. This action is being taken under the Clean Air Act (CAA). This action does not constitute a redesignation to attainment under the CAA. The designation status of the Philadelphia Area will remain nonattainment for the 2006 24-hour PM_{2.5} NAAQS until such time as EPA determines that the Philadelphia Area meets the CAA requirements for redesignation to attainment, including an

approved maintenance plan.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2012-0371** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: Mastro.donna@epa.gov
- C. Mail: **EPA-R03-OAR-2012-0371**, Donna Mastro, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2012-0371**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through

www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposed action related to Pennsylvania or Delaware, please contact Emlyn Vélez-Rosa, (215) 814-2038, or by e-mail at velez-rosa.emlyn@epa.gov. If you have questions concerning today's proposed action related to New Jersey, please contact Gavin Lau, (212) 637-3708, or by e-mail at lau.gavin@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the Action EPA is Proposing?

II. What is the Background of this Action?

III. What is EPA's Analysis of the Relevant Air Quality Data?

IV. What are the Effects of this Action?

V. Statutory and Executive Order Reviews

I. What is the Action EPA is Proposing?

In accordance with section 179(c)(1) of the CAA, 42 U.S.C. 7509(c)(1), and 40 CFR 51.1004(c), EPA is proposing to determine that the Philadelphia Area has attained the 2006 24-hour PM_{2.5} NAAQS. The proposal is based upon quality-assured and certified ambient air monitoring data for the 2008-2010 and 2009-2011 monitoring periods and upon data available to date for 2012, which show that the Philadelphia Area attained the 2006 24-hour PM_{2.5} NAAQS. EPA received requests from the States of Delaware, Pennsylvania, and New Jersey¹ for the determination of attainment for the Philadelphia area for the 2006 24-hour PM_{2.5} NAAQS.

II. What is the Background of this Action?

On September 21, 2006, EPA retained the 1997 annual PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) (hereby “the 2006 annual PM_{2.5} NAAQS”) based on a 3-year average of annual mean PM_{2.5} concentrations, and promulgated a new 24-hour standard of 35 µg/m³ based on a 3-year average of the 98th percentile of 24-hour concentrations (71 FR 61144, October 17,

¹ The New Jersey Department of Environmental Protection (NJDEP) formally requested EPA to make a determination of attainment for the 2006 24-hour PM_{2.5} NAAQS for the Philadelphia Area on October 5, 2011 through a letter from Bob Martin, NJDEP Commissioner to Judith A. Enck, Regional Administrator of EPA Region II.

2006). The revised 2006 24-hour PM_{2.5} standard (hereafter “the 2006 24-hour PM_{2.5} NAAQS”) became effective on December 18, 2006. *See* 40 CFR 50.13. The more stringent 2006 24-hour PM_{2.5} NAAQS is based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to PM_{2.5} at this level.

Many petitioners challenged aspects of EPA's 2006 revisions to the PM_{2.5} NAAQS. *See American Farm Bureau Federation and National Pork Producers Council, et al. v. EPA*, 559 F.3d 512 (D.C. Cir. 2009). As a result of this challenge, the U.S. Court of Appeals for the District of Columbia Circuit remanded the 2006 annual PM_{2.5} NAAQS to EPA for further proceedings. The 2006 24-hour primary and secondary PM_{2.5} NAAQS were not affected by the remand and remain in effect.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On November 13, 2009, EPA published designations for the 2006 24-hour PM_{2.5} NAAQS (74 FR 58688), which became effective on December 14, 2009. In that action, EPA designated the Philadelphia Area as nonattainment for the 2006 24-hour PM_{2.5} NAAQS. The Philadelphia Area is comprised of New Castle County in Delaware; Burlington, Camden, and Gloucester Counties in New Jersey; and Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania. *See* 40 CFR 81.339 (Pennsylvania), 40 CFR 81.331 (New Jersey), and 40 CFR 81.308 (Delaware). This proposed action only addresses the 2006 24-hour PM_{2.5} NAAQS and has no effect on control measures or air quality in the area.

On March 29, 2007, EPA issued a detailed implementation rule, codified at 40 CFR part 51, subpart Z, to assist states and tribes with the development of SIPs to demonstrate attainment with the 1997 annual and 24-hour PM_{2.5} NAAQS (the “2007 PM_{2.5} Implementation Rule”) (72 FR 20586, April 25, 2007). EPA believes that the overall framework and policy approach of the 2007 PM_{2.5} Implementation Rule provides effective and appropriate guidance on the EPA’s interpretation of the general statutory requirements that states should address in their SIPs, and that such interpretation is relevant to the statutory requirements for the 2006 24-hour PM_{2.5} NAAQS. However, in light of new information that has become available since the issuance of the 2007 PM_{2.5} Implementation Rule, EPA published on March 2, 2012, the memorandum “Implementation Guidance for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS)” (the “2006 24-hour PM_{2.5} Implementation Guidance”).² This memorandum provides additional guidance to assist states with development of their SIPs for the 2006 24-hour PM_{2.5} NAAQS.

In general, areas violating the NAAQS should meet the basic CAA requirements set forth in section 172. The 2006 24-hour PM_{2.5} nonattainment designations triggered the CAA’s requirements under section 172(c), which requires the submission of an attainment plan for each designated nonattainment area. The 2007 PM_{2.5} Implementation Rule specifies that states must submit attainment plans for their nonattainment areas to EPA by no later than three years from the effective date of designation. Attainment plans for the 2006 24-hour PM_{2.5} NAAQS must be submitted by December 14, 2012. The 2007 PM_{2.5} Implementation Rule also outlines the SIP requirements for the attainment plan, which include among other things, the submission of an

² EPA’s implementation guidance for the 2006 24-hour PM_{2.5} NAAQS is available at http://www.epa.gov/ttn/naaqs/pm/pdfs/20120302_implement_guidance_24-hr_pm2.5_naaqs.pdf.

attainment demonstration showing the air quality improvements expected to result from national and local control measures, an analysis of RACM, including all RACT, a RFP plan, and contingency measures. In the 2006 24-hour PM_{2.5} Implementation Guidance, EPA recommends that states follow a similar approach for each one of these SIP requirements when demonstrating attainment of the 2006 24-hour PM_{2.5} NAAQS.

Under section 172(a)(2)(A) of the CAA, an area's attainment date would be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment. Because the designation of nonattainment areas for the 2006 24-hour PM_{2.5} NAAQS became effective on December 14, 2009, the presumptive five-year attainment date for many areas would be no later than December 14, 2014. The 2006 24-hour PM_{2.5} NAAQS relies on evaluating three full calendar years of air quality data to calculate the 24-hour design value for the area. To determine attainment, EPA commonly uses the three most recent calendar years of complete air quality data that are available for the nonattainment area.

III. What is EPA's Analysis of the Relevant Air Quality Data?

Today's proposed rulemaking action determines that the Philadelphia Area has attained the 2006 24-hour PM_{2.5} NAAQS, based on quality assured data from 2008-2010 and 2009-2011 monitoring periods. Under EPA regulations at 40 CFR 50.13(c), the 2006 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined

in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35 ug/m³. Data handling conventions and computations necessary for determining whether areas have met the PM_{2.5} NAAQS, including requirements for data completeness, are listed in appendix N of 40 CFR part 50.

EPA previously determined that the PM_{2.5} monitoring network for the Philadelphia Area is adequate. EPA found that the number of monitors in the Area meets the minimum regulatory requirements given in 40 CFR part 58, appendix D, section 4.7, and that the monitoring network in place is in accordance with the States' most recent annual monitoring network plans approved by EPA, as required by 40 CFR 58.10.³ During the periods of 2008-2010 and 2009-2011, the Philadelphia Area had in place a total of 16 PM_{2.5} monitoring sites, whose data was eligible for comparison to the 2006 24-hour PM_{2.5} NAAQS.

EPA has reviewed the quality-assured, quality-controlled, certified ambient air monitoring data recorded in the EPA's Air Quality System (AQS) database for PM_{2.5} for the Philadelphia Area during monitoring periods 2008-2010 and 2009-2011, consistent with the requirements contained in 40 CFR part 50. Preliminary PM_{2.5} data for 2012, which is not yet quality-assured and quality-controlled, was also reviewed. The 24-hour design values for the 2006 24-hour PM_{2.5} NAAQS (i.e., the 3-year average of the 98th percentile values of 24-hour PM_{2.5} concentrations) for the

³ Separate ambient monitoring network plans are submitted annually to EPA by each of the States in the 24-hour PM_{2.5} Philadelphia Area. The Commonwealth of Pennsylvania's 2011 annual ambient monitoring network plan was approved by EPA in a December 6, 2011 letter from Shawn M. Garvin, Regional Administrator, EPA Region III, to Michael L. Krancer, Secretary of the Pennsylvania Department of Environmental Protection (PADEP). The State of Delaware's 2011 annual ambient monitoring network plan was approved by EPA in a December 6, 2011 letter from Shawn M. Garvin, Regional Administrator, EPA Region III, to Collin P. O'Mara, Secretary of the Delaware Department of Natural Resources and Environmental Control (DNREC). The State of New Jersey's 2011 annual ambient monitoring network plan was approved by EPA in an October 27, 2011 letter from John Filippelli, Acting Director of the Division of Environmental Planning and Protection, EPA Region II, to Jane Kozinski, Assistant Commissioner of the New Jersey Department of Environment Protection (NJDEP).

Philadelphia Area for the 2008-2010 and 2009-2011 monitoring periods are provided in Table 1 and Table 2, respectively. Table 3 shows the preliminary PM_{2.5} monitoring data available to date for 2012. The PM_{2.5} 98th percentile values and 24-hour design values for the Philadelphia Area can be found at <http://www.epa.gov/airtrends/values.html>.

Table 1. Philadelphia Area's 2008-2010 PM_{2.5} Air Quality Data (in µg/m³)

State	County	AQS Site ID	98 th Percentile Value ²			2008-2010 24-hour Design Value	Completeness Status ³
			2008	2009	2010		
Delaware	New Castle	10-003-1003	31.6*	23.2	24.3	26	Max quarter
Delaware	New Castle	10-003-1007	28.1	20.6*	27.5	25	Max quarter
Delaware	New Castle	10-003-1012	28.6	23.4	24.9*	26	Max quarter
Delaware	New Castle	10-003-2004	34.8	28.4	27.9	30	Complete
New Jersey	Camden	34-007-0003 ¹	36.6	-	-	37	Incomplete
New Jersey	Camden	34-007-1007	28.0	25.0	23.4	25	Complete
New Jersey	Gloucester	34-015-0004	23.9	21.9	21.6*	22	Max Quarter
Pennsylvania	Bucks	42-017-0012	30.9*	25.8	28.3	28	Collocated
Pennsylvania	Chester	42-029-0100	32.0 *	31.1	35.1	33	Incomplete
Pennsylvania	Delaware	42-045-0002	28.6	27.9	32.8	30	Complete
Pennsylvania	Montgomery	42-091-0013	23.7	27.2	25.9	26	Complete
Pennsylvania	Philadelphia	42-101-0004	34.5	25.9	27.6	29	Complete
Pennsylvania	Philadelphia	42-101-0024	30.5	25.5	25.2	27	Complete
Pennsylvania	Philadelphia	42-101-0047	32.8	27.2	27.6	29	Complete
Pennsylvania	Philadelphia	42-101-0055	34.5	28.6	28.9	31	Complete
Pennsylvania	Philadelphia	42-101-0057	32.8	28.3	27.9	30	Complete

¹ The Camden monitor at site 34-007-0003 was shut down September 2008.

² Annual 98th percentile values not meeting the completeness criteria are marked with an asterisk (*). The dash (-) indicates that no data was collected during this time.

³ This column indicates whether the monitoring data from the monitor meet the completeness requirement (Complete) or not (Incomplete) for each quarter of the 3-year period. "Max quarter" denotes that the monitor has incomplete data, but passed the maximum quarter substitution test. "Collocated" indicates that the collocated data was substituted for missing data. Guidance on EPA's substitution tests can be found in EPA's April 1999 document "Guideline on Data Handling Conventions for the PM NAAQS."

Table 2. Philadelphia Area's 2009-2011 PM_{2.5} Air Quality Data (in µg/m³)

State	County	AQS Site ID	98 th Percentile Value ¹			2009-2011 24-hour Design Value	Completeness Status ²
			2009	2010	2011		
Delaware	New Castle	10-003-1003	23.2	24.3	22.4*	23	Max quarter
Delaware	New Castle	10-003-1007	20.6*	27.5	21.0	23	Max quarter
Delaware	New Castle	10-003-1012	23.4	24.9	22.2*	24	Max quarter
Delaware	New Castle	10-003-2004	28.4	27.9	24.7	27	Complete
New Jersey	Camden	34-007-1007	25.0	23.4	24.3	24	Complete
New Jersey	Gloucester	34-015-0004	21.9	21.6*	22.2	22	Max quarter
Pennsylvania	Bucks	42-017-0012	25.8	28.3	29.7	28	Complete
Pennsylvania	Chester	42-029-0100	31.1	35.1	33.8*	33	Incomplete
Pennsylvania	Delaware	42-045-0002	27.9	32.8	28.6	30	Complete
Pennsylvania	Montgomery	42-091-0013	27.2	25.9	27.6	27	Complete
Pennsylvania	Philadelphia	42-101-0004	25.9	27.6	29.6	28	Complete
Pennsylvania	Philadelphia	42-101-0024	25.5	25.2	-	25	Incomplete
Pennsylvania	Philadelphia	42-101-0047	27.2	27.6	27.5	27	Complete
Pennsylvania	Philadelphia	42-101-0055	28.6	28.9	30.6	29	Complete
Pennsylvania	Philadelphia	42-101-0057	28.3	27.9	30.5	29	Complete
Pennsylvania	Philadelphia	42-101-1002	-	-	27.5	27	Incomplete

¹ Annual 98th percentile values not meeting the completeness criteria are marked with an asterisk (*). The dash (-) indicates that no data was collected during this time.

² This column indicates whether the monitoring data from the monitor meet the completeness requirement (Complete) or not (Incomplete) for each quarter of the 3-year period. "Max quarter" denotes that the monitor has incomplete data, but passed the maximum quarter substitution test. Guidance on EPA's substitution tests can be found in EPA's April 1999 document "Guideline on Data Handling Conventions for the PM NAAQS."

Table 3. Philadelphia Area's Preliminary 2012 PM_{2.5} Air Quality Data (in µg/m³)

State	County	AQS Site ID	2012 98 th Percentile Value ¹
Delaware	New Castle	10-003-1003	20.2
Delaware	New Castle	10-003-1007	22.7
Delaware	New Castle	10-003-1012	22.0
Delaware	New Castle	10-003-2004	23.9
New Jersey	Camden	34-007-1007	17.5
New Jersey	Gloucester	34-015-0004	21.8
Pennsylvania	Bucks	42-017-0012	34.9
Pennsylvania	Chester	42-029-0100	21.0
Pennsylvania	Delaware	42-045-0002	23.9
Pennsylvania	Montgomery	42-091-0013	21.1

Pennsylvania	Philadelphia	42-101-0004	27.9
Pennsylvania	Philadelphia	42-101-0047	20.0
Pennsylvania	Philadelphia	42-101-0055	19.6
Pennsylvania	Philadelphia	42-101-0057	20.6
Pennsylvania	Philadelphia	42-101-1002	23.4

¹ Monitoring data available to date correspond to the first quarter of 2012, and have not been quality-assured, quality-controlled, or certified.

The 24-hour design value determined for the Philadelphia Area is the highest 3-year average of the annual 98th percentile measured at all the monitors in the Area during this time, which meets the criteria to be used for comparison to the 2006 24-hour PM_{2.5} NAAQS. Only valid and complete air quality data can be used for comparison to the 2006 24-hour PM_{2.5} NAAQS. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. However, years are considered valid, notwithstanding quarters with less than complete data, if the resulting annual 98th percentile value or resulting 24-hour standard design value is greater than the level of the standard.

EPA addresses missing data from monitors not meeting the completeness requirement by applying three different procedures: collocated substitution test, maximum quarter substitution test (“maximum quarter test”), and EPA’s statistical procedure. In the collocated substitution test, data from a collocated monitor at the site are substituted for the missing data. In the maximum quarter test, maximum recorded values are substituted for the missing data. For each substitution test, a 24-hour design value is calculated using the substituted data and then compared to the 2006 24-hour PM_{2.5} NAAQS. *See* EPA’s April 1999 “Guideline on Data Handling Conventions for the PM NAAQS.”⁴ EPA’s statistical procedure is used when a monitor does not pass both of these two substitution tests or the incomplete monitor is not

⁴ EPA’s guidance document is available at <http://www.epa.gov/ttn/oarpg/t1/memoranda/pmfinal.pdf>.

collocated. This procedure is used to determine if the incomplete monitor would have attained the 2006 24-hour PM_{2.5} NAAQS had it been operated during this time by computing a “diagnostic” 24-hour design value.

While most of the PM_{2.5} monitoring data satisfy the data completeness requirement, several monitors in the Philadelphia Area had incomplete 24-hour design values during the 2008-2010 and 2009-2011 periods, as indicated in Tables 1 and 2. EPA has applied the statistical procedure to address the missing data of two monitors in the Philadelphia Area: Site 34-007-0003 (Camden monitor) in Camden County, New Jersey and site 42-029-0100 (New Garden monitor) in Chester County, Pennsylvania. Diagnostic 24-hour design values were determined for the Camden monitor for 2008-2010 and for the New Garden monitor for both 2008-2010 and 2009-2011 periods. The diagnostic 24-hour design values for the New Garden and Camden monitors in the Philadelphia Area were below the 2006 24-hour PM_{2.5} NAAQS level of 35 ug/m³ during both 2008-2010 and 2009-2011. The statistical method used to compute diagnostic design values was successfully used previously for the Philadelphia Area determination of attainment for the annual 1997 PM_{2.5} NAAQS (*see* 77 FR 3223 and 77 FR 28782). Additional details on the statistical method can be found in the Technical Support Document (TSD) for this action, which is available online at www.regulations.gov, Docket ID No. **EPA-R03-OAR-2012-0371**.

As shown in Table 1, the Camden Monitor at site 34-007-0003, located in Camden County, was the highest reading monitor during 2008-2010. However, the 24-hour design value from this site reflects incomplete data during most of the 2008-2010 monitoring period due to the monitor’s shutdown in September 2008. This monitor only collected data for 3 out of 12 quarters. The last

valid 24-hour design value at site 34-007-0003 was $35 \mu\text{g}/\text{m}^3$ in 2006-2008, prior to its shutdown. After EPA filled in the missing data using its statistical procedure, an attaining 24-hour design value for the Camden monitor of $28 \mu\text{g}/\text{m}^3$ was computed, which is below the 2006 24-hour $\text{PM}_{2.5}$ NAAQS of $35 \mu\text{g}/\text{m}^3$. The remaining $\text{PM}_{2.5}$ monitors in the Philadelphia area showed concentrations below the 2006 24-hour $\text{PM}_{2.5}$ NAAQS during the 2008-2010 monitoring period. As indicated in Table 2, all monitors measured concentrations averaging below the 24-hour $\text{PM}_{2.5}$ NAAQS of $35 \mu\text{g}/\text{m}^3$ during 2009-2011. The 24-hour design value for 2009-2011 for the Philadelphia Area is $33 \mu\text{g}/\text{m}^3$ based on monitoring data collected by the New Garden monitor at site 42-029-0100 in Chester County, Pennsylvania.

EPA's review of quality-assured, quality-controlled, certified ambient air monitoring data collected in the Philadelphia Area during 2008-2010 and 2009-2011 indicates that the Area has attained the 2006 24-hour $\text{PM}_{2.5}$ NAAQS. Additionally, preliminary $\text{PM}_{2.5}$ data available to date for 2012 is consistent with continued attainment of the 2006 24-hour $\text{PM}_{2.5}$ NAAQS in the Philadelphia Area. Additional information about the monitoring network and air quality data used in this determination can be found in the TSD for this action, which is available online at www.regulations.gov, Docket ID No. **EPA-R03-OAR-2012-0371**.

IV. What are the Effects of this Action?

If EPA's proposed determination of attainment based on quality-assured data during 2008-2010 and 2009-2011 is made final, the requirements for the Philadelphia Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 2006 24-hour $\text{PM}_{2.5}$ NAAQS would be suspended for as

long as the Philadelphia Area continues to attain the 2006 24-hour PM_{2.5} NAAQS. Notably, as described below, any such determination would not be equivalent to the redesignation of the Philadelphia Area to attainment for the 2006 24-hour PM_{2.5} NAAQS. If this proposed determination is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the Federal Register, that the Area has violated the 2006 24-hour PM_{2.5} NAAQS, the basis for the suspension of the specific requirements would no longer exist for the Philadelphia Area, and the Area would thereafter have to address the applicable requirements for the 2006 24-hour PM_{2.5} NAAQS. *See* 40 CFR 51.1004(c).

Finalizing this proposed determination would not constitute a redesignation of the Philadelphia Area to attainment of the 2006 24-hour PM_{2.5} NAAQS under section 107(d)(3) of the CAA. Further, finalizing this determination would not involve approving a maintenance plan for the Philadelphia Area as required under section 175A of the CAA, nor would it involve finding that the Area has met all other requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable emission reductions.⁵ Even if EPA finalizes the proposed action, the designation status of the Philadelphia Area would remain nonattainment for the 2006 24-hour PM_{2.5} NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes action to redesignate the Philadelphia Area.

⁵ The monitoring data from the 2008-2010 and 2009-2011 monitoring periods that are relied on in this notice may be impacted by reductions associated with the Clean Air Interstate Rule (CAIR), which is in place only temporarily as it was remanded to EPA in 2008. *See North Carolina v. EPA*, 531 F.3d 896, *as modified on reh'g*, 550 F.3d 1176 (D.C. Cir. 2008). Nonetheless, because this determination addresses only whether the monitoring data shows attainment, at this time EPA need not address whether such attainment was due to the remanded and thus not permanent CAIR.

The action described is a proposed determination regarding the Philadelphia Area's attainment only with respect to the 2006 24-hour PM_{2.5} NAAQS. Today's action does not address the 1997 annual or 24-hour PM_{2.5} standards. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed determination of attainment of the Philadelphia Area with respect to the 2006 24-hour PM_{2.5} NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 23, 2012.

W.C. Early,
Regional Administrator,
Region III.

Dated: September 10, 2012.

Judith A. Enck,
Regional Administrator,
Region II.

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